

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

**FILED**

**MAR 03 2011**

  
CLERK

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PAMELA KANNAS,

Plaintiff,

vs.

MICHAEL ASTRUE,  
Commissioner of Social Security,

Defendant.

CIV. 09-4149

OPINION AND ORDER

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Pending before the Court are the Defendant's Objections (Doc. 20) to the Magistrate Judge's Report and Recommendation (Doc. 19). This Court referred the case to United States Magistrate Judge John E. Simko for the purpose of issuing a Report and Recommendation. The Magistrate Judge has recommended that Plaintiff's Motion for Summary Judgment (Doc. 12) be GRANTED, and that the Commissioner's denial of benefits be reversed and remanded for reconsideration and further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). Defendant objects and urges the Commissioner's decision be affirmed.

The Court has carefully conducted a *de novo* review of the Magistrate Judge's Report and Recommendation, the Defendant's objections, and the record of the administrative proceedings. Of particular note is the need for the record evidence to be clarified and properly evaluated by the administrative law judge. After having reviewed the record, the Court agrees with the Magistrate Judge's Report and Recommendation.

A sentence four remand is proper when the district court makes a substantive ruling regarding the correctness of the Commissioner's decision and remands the case in accordance with such ruling.

*Buckner v. Apfel*, 213 F.3d 1006, 1010 (8<sup>th</sup> Cir. 2000). Remand with instructions to award benefits is appropriate “only if the record overwhelmingly supports such a finding.” *Buckner* at 1011. In the face of a finding of an improper denial of benefits, but the absence of overwhelming evidence to support a disability finding by the Court, out of deference to the ALJ the proper course is to remand for further administrative findings. *Id.*, *Cox v. Apfel*, 160 F.3d 1203, 1210 (8<sup>th</sup> Cir. 1998).

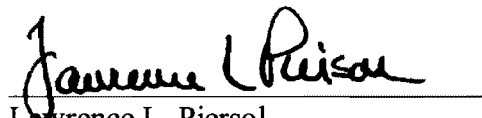
Reversal and remand is warranted in this case, not because the evidence is overwhelming, but because the record evidence should be clarified and properly evaluated. Therefore, a remand for further administrative proceedings is appropriate. Accordingly, it is hereby

ORDERED that:

1. Defendant’s objections (Doc. 20) are OVERRULED and the Magistrate Judge’s Report and Recommendation (Doc. 19) is ADOPTED by the Court.
2. Plaintiff’s Motion for Summary Judgment (Doc. 12) is GRANTED.
3. The Commissioner’s decision is REVERSED under sentence four of 42 U.S.C. § 405(g) and the case is REMANDED to the Commissioner for further administrative proceedings as set forth above.

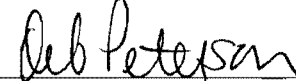
Dated this 3rd day of March, 2011.

BY THE COURT:



Lawrence L. Piersol  
United States District Judge

ATTEST:  
JOSEPH HAAS, CLERK

BY:   
DEPUTY